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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

RAFAEL ANGUIANO VALDES,

Defendant and Appellant.

G027216

(Super. Ct. Nos. M-8808 &  
95SF0531)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County,  
Kazuharu Makino, Judge. Affirmed.

Law Offices of James C. Angleton and James C. Angleton for Defendant  
and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant  
Attorney General, Gary W. Schons, Assistant Attorney General, Jeffrey J. Koch and  
Garrett Beaumont, Deputy Attorneys General, for Plaintiff and Respondent.

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Defendant Rafael Anguiano Valdes pleaded guilty to criminal offenses. Several years later, he petitioned for writ of error *coram nobis* and moved to vacate the judgment under Penal Code section 1016.5 (all further references are to the Penal Code unless otherwise indicated). The trial court denied both requests.

Initially, we dismissed defendant's appeal, finding the order nonappealable. After our decision became final, the Supreme Court issued its opinion in *People v. Totari* (2002) 28 Cal.4th 876, holding an order denying a motion to vacate a judgment which is made under section 1016.5 is appealable as an order made after judgment affecting a substantial right of the defendant. (*Id.* at pp. 886-887; see § 1237, subd. (b).) The Supreme Court granted defendant's petition for review and transferred the matter back to this court with directions to vacate our prior decision and to reconsider the matter in light of *People v. Totari, supra*, 28 Cal.4th 876. We vacated our prior decision, granted the parties permission to file supplemental appellate briefs, and now proceed to decide the matter on its merits.

In his opening brief, defendant asserts several arguments premised on a claim he failed to receive accurate advice on the immigration consequences of his guilty plea. He also argues the record fails to show the trial court found he understood these consequences and had an opportunity to discuss them with his attorney before accepting his plea. In a supplemental brief, defendant contends the record fails to show he received the required advisement because the trial court failed to ask the Spanish language interpreter if she accurately and literally translated the change of plea form's immigration consequences for him. Defendant also claims the failure to make this inquiry violated his constitutional right to the assistance of an interpreter when entering his guilty plea. We conclude these arguments lack merit and affirm the trial court's decision.

## FACTS

Defendant is a Mexican-born permanent resident of the United States. In August 1995, he pleaded guilty in superior court to spousal battery, vandalism, assault, and battery, and also admitted having suffered a prior conviction for spousal battery.

Before entering the plea, defendant initialed and signed a guilty plea form which contained the following paragraph: “I understand that if I am not a citizen of the United States the conviction for the offense charged may have the consequence of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.” Before the trial court accepted the guilty plea, defendant represented to the court that he “listened to [a Spanish language] interpreter going over th[e] guilty plea form with [him].” A Spanish language interpreter also translated the oral proceedings for defendant.

After accepting the guilty plea, the trial court placed defendant on five years probation. Nineteen months later defendant appeared before the court and admitted violating the terms of his probation. The trial court revoked probation and imposed a two-year prison sentence on defendant.

The United States Immigration and Naturalization Service (INS) served defendant with a notice that it was seeking his removal from the country based on his spousal battery conviction. Defendant asserts an immigration judge dismissed the charge. The INS then served him with an amended notice alleging defendant was deportable because the spousal battery conviction and resulting sentence constituted an aggravated felony.

Thereafter, defendant filed several different motions and petitions in an unsuccessful effort to vacate his conviction or reduce its severity. In March 2000, defendant filed his second petition for a writ of error *coram nobis* and a motion to vacate

the judgment under section 1016.5. The superior court denied both requests on the merits.

## DISCUSSION

Defendant's opening brief presents several different arguments premised on the assertion "the pro forma warning . . . on the guilty plea form misrepresented the immigration consequences of [defendant's] guilty plea." He claims the "guilty plea, the . . . admission of the [prior spousal battery] conviction . . ., and [his] failure to rehabilitate made him statutorily deportable, excludable and ineligible for naturalization." Thus, he concludes the guilty plea's "pro forma warning" that they "may" make him deportable, excludable, or ineligible for naturalization was insufficient.

The premise of these arguments is invalid. Before accepting a guilty plea, a court must, in addition to advising the defendant of and obtaining a knowing and intelligent waiver of the constitutional rights lost by the plea, inform the defendant of the plea's direct consequences. (*People v. Walker* (1991) 54 Cal.3d 1013, 1022; *People v. Wright* (1987) 43 Cal.3d 487, 491-492.) "A consequence is deemed to be 'direct' if it has ""a definite, immediate and largely automatic effect on the range of the defendant's punishment."" [Citation.]" (*People v. Moore* (1998) 69 Cal.App.4th 626, 630.)

Defendant claims he did not receive adequate notification of the adverse immigration consequences resulting from his guilty plea. However, since deportation, exclusion, and denial of naturalization do not inexorably follow from a conviction, they are deemed collateral consequences for which, absent a statute to the contrary, no duty to inform arises when a defendant enters a guilty plea to criminal charges. (*In re Resendiz* (2001) 25 Cal.4th 230, 242; *People v. Superior Court (Zamudio)* (2000) 23 Cal.4th 183, 198; *People v. Limones* (1991) 233 Cal.App.3d 338, 344.)

Through section 1016.5, the Legislature has nonetheless declared the potential adverse immigration consequences to noncitizens convicted of a criminal offense is sufficiently important to require they be informed of that possibility before entering a formal admission of guilt. Subdivision (a) of the statute declares, “Prior to acceptance of a plea of guilty or nolo contendere to any offense punishable as a crime under state law, except offenses designated as infractions under state law, the court shall administer the following advisement on the record to the defendant: [¶] If you are not a citizen, you are hereby advised that conviction of the offense for which you have been charged may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.” Thus, “a noncitizen defendant has a ‘substantial right’ to be given complete advisements under section 1016.5. [Citation.]” (*People v. Totari, supra*, 28 Cal.4th at p. 883; see also *People v. Superior Court (Zamudio), supra*, 23 Cal.4th at pp. 199-200.)

To enforce the foregoing advisement, section 1016.5 further provides, “If . . . the court fails to advise the defendant as required by this section and the defendant shows that conviction of the offense to which defendant pleaded guilty . . . may have [adverse immigration] consequences for the defendant . . . , the court, on defendant’s motion, shall vacate the judgment and permit the defendant to withdraw the plea of guilty or nolo contendere, and enter a plea of not guilty.” (§ 1016.5, subd. (b).) A defendant seeking relief under section 1016.5 must establish, “(1) he or she was not properly advised of the immigration consequences as provided by the statute; (2) there exists, at the time of the motion, more than a remote possibility that the conviction will have one or more of the specified adverse immigration consequences; and (3) he or she was prejudiced by the nonadvisement.” (*People v. Totari, supra*, 28 Cal.4th at p. 884.)

The guilty plea form which defendant signed and initialed contained a complete advisement of the potential adverse immigration consequences resulting from his guilty plea. Defendant disputes the advisement’s adequacy because “[t]he pro forma

warning . . . described [the adverse consequences] as *possibilities*,” while “his plea had made him statutorily deportable, excludable[,] and ineligible for naturalization. . . .” (Italics added.) But section 1016.5 only requires a defendant be advised of the *potential* adverse immigration consequences. The Legislature expressly declared it enacted the statute “to promote fairness . . . by requiring in such cases that acceptance of a guilty plea . . . be preceded by an appropriate warning of the special consequences for such a defendant which *may* result from the plea.” (§ 1016.5, subd. (d), italics added.) The rule proposed by defendant would necessitate state trial courts becoming experts in federal immigration law so that they could provide defendants with detailed explanations of how their state criminal convictions would affect their immigration status. Nothing in section 1016.5 indicates the Legislature intended such a result. For this reason, the bulk of the arguments in defendant’s opening brief lack merit.

Defendant also claims the trial court failed to comply with *People v. Ramirez* (1999) 71 Cal.App.4th 519. He asserts *Ramirez* requires a court to “determine whether the defendant . . . understood the immigration consequences of the plea and whether the defendant . . . received an opportunity to discuss the[se] . . . consequences with counsel before accepting the proposed plea agreement. . . .” We disagree with his interpretation of *Ramirez*. There the defendant argued section 1016.5 required the trial court to verbally advise a defendant of the plea’s potential immigration consequences, and thus the written advisement provided in that case was inadequate. The *Ramirez* court affirmed an order denying relief, stating, “[o]ur reading of section 1016.5 does not bring us to the same conclusion.” (*People v. Ramirez, supra*, 71 Cal.App.4th at p. 521.) *Ramirez* also noted, “[s]o long as the advisements are given, the language of the advisements appears in the record for appellate consideration of their adequacy, and the trial court satisfies itself that the defendant understood the advisements and had an opportunity to discuss the consequences with counsel, the legislative purpose of section 1016.5 is met. [Citation.]” (*Id.* at p. 522.)

The record reflects these requirements were met in this case. The plea form which defendant initialed and signed adequately informed him of all of the potential immigration consequences. His attorney also signed the form below a statement declaring, “I have explained each of the above rights to the defendant . . . .” Although defendant claims to have a limited ability to communicate in English, he admitted to the trial judge that a Spanish language interpreter reviewed the guilty plea form with him. *Ramirez* does not require any further showing.

In his supplemental brief, defendant notes that, before accepting the guilty plea, the trial court never asked the Spanish language interpreter if she literally and accurately translated the plea form’s immigration consequences statement for defendant. Thus, he contends “[t]he court’s failure to determine from the interpreter whether [defendant] had received an accurate and literal translation of the required immigration warning prevented the creation of a record that [defendant] had received the warning,” and “constituted a material interruption in access to the interpreter.”

These arguments lack merit. Throughout the proceeding, defendant received the assistance of a certified Spanish language interpreter. (*People v. Alvarez* (1996) 14 Cal.4th 155, 209.) The court’s minutes reflect the interpreter was sworn to make a true interpretation in Spanish. (See Evid. Code, § 751.) Defendant signed and initialed a guilty plea form containing an immigration consequences advisement complying with section 1016.5. He admitted “he listened to the interpreter going over” the form with him. Courts presume “that official duty has been regularly performed.” (Evid. Code, § 664.) This presumption has been applied to the acts of court clerks (*People v. Jackson* (1996) 13 Cal.4th 1164, 1213), bailiffs (*People v. Hawthorne* (1992) 4 Cal.4th 43, 67), and court reporters (*People v. Ayala* (2000) 23 Cal.4th 225, 289). No reason exists to apply a different rule to certified interpreters sworn to provide a true interpretation or translation in judicial proceedings. Thus, the trial court did not have to

ask the interpreter if she provided defendant an accurate and literal translation of the immigration consequences advisement before accepting his guilty plea.

#### DISPOSITION

The postjudgment order denying defendant's petition for writ of error *coram nobis* and his motion to vacate the judgment under Penal Code section 1016.5 is affirmed.

RYLAARSDAM, ACTING P. J.

WE CONCUR:

BEDSWORTH, J.

O'LEARY, J.